Thomas Amory, Esq; Administrator of *Katherine Amory*, alias *Luttrell*, } Appellant.

Colonel *Henry Luttrell.* } Respondent

Et e Contra.

The Respondent *Luttrell's* CASE.

1672 1675 1684 1690 THAT *Thomas Lutttrel*, the Elder, on the Intermarriage of his eldest Son *Simon* with *Katherine Newcomen*, settles part of his Estate on her for a Jointure; and *Simon*, after the Death of *Thomas*, settles other Lands by express Terms on *Katharine* as an additional Jointure; and afterwards Leases other Lands to Colonel *Richard Talbot* for sixty one Years, worth about 350*l. per Annum*, for a separate Maintenance for *Katherine*; which Term was afterwards forfeited by the Attainder of Colonel *Talbot*, and the Estate of *Simon* was likewise forfeited by his Attainder.

That Colonel *Luttrel*, the Respondent, having obtained a *Custodium* from the Crown of the said Lands and Premisses at a considerable yearly Rent, he agrees with Mrs. *Luttrel* (then in *France*, and out-lawed with her Husband) to pay her 200*l.* a Year during *Simon's* Life, in Lieu of her separate Maintenance and Arrears; and she accordingly, by Letter of Attorney, impowers Mrs. *Katherine Sheldon* to execute the Agreement for her, and release the Arrears, which Mrs. *Sheldon* did by Deeds duly executed, and received the 200*l.* a Year for Mrs. *Luttrel's* Use 'till *Simon's* Death, and punctually paid the same to her or Order; and *Simon* died in *October* 1698.

That the Respondent *Luttrel* obtained a Grant from King *William* of the Premisses, and the Act of Resumption being made for vesting all Forfeitures in *Ireland* in Trustees from the 2d of *November* 1699, before which no Grantee was to be made accountable, as by a Clause in the said Act, and by another Clause the Estates of Article Men were saved to them; and Mrs. *Luttrel* claimed both her Jointures before the Trustees, and they decreed her thereto.

The Respondent *Luttrell* applied to the Parliament in *England* for his Estate; in which Act Mrs. *Luttrell*
1700 petitioned to have a Saving for her Right, and a Clause being accordingly offered for her, to intitle her
1701 to the Arrears from *Simon's* Death, Mr. *Luttrell* objected that he being a Grantee was not accountable before *November* 1699. And the *Irish* Trustees being examined before the Committee, and they declaring that they adjudged her her Jointures and Arrears from the 2d of *November*, 1699, being the Commencement of the Act, the said Clause was rejected, and another inserted to intitle her to her Jointures, pursuant to the Adjudication of the Trustees, which the Committee understood only to be from the 2d of *November* 1699.

That Mrs. *Luttrell* being then, or soon after, marry'd to Mr. *Amory*, who was then Register to the Trustees, she by his means, to obviate the Intention of the Clause obtained in her Favour, procured a Certificate from the Trustees, that they had adjudged her to both her Jointures and Arrears from the Death of *Simon*, contrary to the express Declaration of the Trustees in *England*; and then *Amory* and she brought their Bill in the Exchequer in *Ireland* against the Respondent *Luttrell* to recover the said Arrears from *Simon's* Death, and to recover the separate Maintenance and Arrears from 1689, without taing any notice of the said Agreement, or the Mony paid pursuant thereunto, and made several other frivolous and extravagant Demands, to the value in the whole of 7000*l.* and upwards. And the Respondent insisted in his Answer on *Simon's* and Lord *Tyrconnell's* Forfeitures, and on the Agreement made
1704 by Mrs. *Sheldon*: And that he ought not to be accountable for the Jointure-Lands, but from the 2d of *November* 1699.

1706 And the Cause being heard, the Court decreed the Respondent *Luttrell* should account for the Jointures from *Simon's* Death; but as to all other the Appellant's Demands the Court dismissed his Bill, and the Account being made up by the Officer, there appeared due to the Appellant from the Respondent, discounting from *Simon's* Death, only 710*l.* which the Court directed he should pay by the 25th of *March* 1709, and ordered the Appellant by that time to bring in the Deeds of Settlement to be delivered to the Respondent on his paying the Mony. And in regard of the great Costs and Expence the Respondent was put to, in proving the Agreement with Mrs. *Luttrell*, and defending himself against the Unreasonableness of the Appellant's Demands, both by his Bill, and on the Account;

The Court ordered the Respondent should not be charged with any Interests or Costs, if he paid the Mony by the time prefixed by the Court; but if he did not, to pay Interest and Costs from that time. And though Mr. *Luttrell* offered to pay the Mony to the Appellant within the time prefixed, yet he
1709 refused to receive it, but came for *England*, and brought the Deeds with him. Whereupon the Court ordered the Respondent to be discharged from paying Interest for the Mony, and ordered an Attachment against the Appellant for not bringing in the Deeds.

Appeal. From which Decree and subsequent Orders Mr. *Amory* has appealed to the Lords, and says he ought to have the separate Maintenance, and Interest and Costs.

Which Mr. *Luttrell* hopes the Lords will deem groundless for the Reasons before offered.

Cross Appeal. Colonel *Luttrel* also appeals from this Decree, and hopes, That by the two several Clauses in the said Act of Resumption, and by the Examination of the two Trustees before the Committee of the House of Commons, he will be only liable to account for the Arrears of both the said Jointures from the 2d of *November* 1699. And that the Ingenuity of Mr. *Amory*, then Register to the said Trustees, in obtaining the Certificate of the said Trustees to fit the Clause in the Act made for Colonel *Luttrell's* Relief, after the said Act was made, shall not prevail, but that the said Decree as to that Point may be Reversed.

S. Dodd.

Spencer Cowper.

Amory, Appellant,
Luttrell, Respondent. } *Et e Contra.*

Colonel *Luttrell's* CASE.

To be Heard at the Bar of the House of Lords, on *Thursday* the 30th of *March*, 1710.